

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Helena Chemical Company,

Defendant.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, the United States of America, brings this civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), for the recovery of response costs incurred and to be incurred by the United States for response actions performed at and in connection with the Helena Chemical Company Superfund Sites in Fairfax, Allendale County, South Carolina ("Fairfax Site"), and in Tampa, Hillsborough County, Florida ("Tampa Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and

1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that give rise to the claims related to the Fairfax Site occurred in this district as well as the Middle District of Florida and because the Helena Chemical Company Fairfax Superfund Site is located in this district.

THE SITES

4. The Helena Chemical Company Fairfax Superfund Site, approximately 13.5 acres, is located on Highway 321 South, approximately one mile south of Fairfax, Allendale County, South Carolina. It encompasses a former landfill, approximately four acres, which contained pesticide residues and other waste materials generated on-site.

5. The Helena Chemical Company Tampa Superfund Site, consisting of approximately 8 acres, is located at 2405 North 71st Street in Tampa, Hillsborough County, Florida. It encompasses a chemical plant for the on-site production of sulfur, and formulation of pesticides, herbicides, fungicides, and fertilizers.

DEFENDANT

6. The Helena Chemical Company is a corporation doing business in the State of South Carolina and the State of Florida.

HISTORY OF THE SITES

a. Fairfax Site History

7. The Helena Chemical Company operated the Fairfax Site as a facility for the formulation of liquid, and some dry, agricultural insecticides from 1971 through 1978,

after it merged with the Blue Chemical Company, which operated the same business from the mid- 1960s until 1971.

8. In 1980, due to citizen complaints, the South Carolina Department of Health and Environmental Control began investigation of the Fairfax Site. After several state enforcement efforts, in 1988, the Fairfax Site was listed on the National Priorities List ("NPL"). In 1989, EPA and Helena entered into an Administrative Order on Consent ("AOC") for a CERCLA Remedial Investigation and Feasibility Study ("RI/FS") at the Fairfax Site.

9. In 1992, Helena completed the RI/FS. In 1993, EPA finalized the Record of Decision ("ROD") for the Fairfax Site, and in 1994, EPA issued Helena a Unilateral Administrative Order ("UAO") to conduct the CERCLA Remedial Design/Remedial Action ("RD/RA"). In 1995, EPA issued an Amendment to the ROD which selected incineration for the contaminated soils at the Fairfax Site.

10. In 1999, Helena completed the construction phase of the RD/RA for the Fairfax Site, which included a groundwater recovery system. Currently, Helena is conducting Operation and Maintenance ("O & M") at the Site and it is anticipated that the O & M phase will continue for several more years.

b. Tampa Site History

11. In 1929, the Flagg Sulfur and Chemical built a chemical plant and initiated the production of sulfur, and formulation of pesticides, herbicides, fungicides, and fertilizers, at the Tampa Site. In 1967, the Helena Chemical Corporation purchased this plant and continues its operations to this date.

12. In 1992, EPA and Helena entered into an AOC for RI/FS and during the same time, EPA listed the Tampa Site on the NPL. In 1996, EPA finalized the ROD for the Site and, issued to Helena a UAO to conduct an RD/RA at the Tampa Site.

13. Helena has completed the RD and is currently continuing the RA, pursuant to the UAO, to address groundwater and soil contamination.

14. EPA has documented the release (as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22)) of hazardous substances at both the Fairfax and Tampa Sites through several past investigations and sampling data gathered by the Agency and the respective state agencies. At the Fairfax Site, the following substances were formulated, used, and/or stored at various times: DDT, aldrin, dieldrin, chlordane, benzene hexachloride (BHC), ethoprop (Mocap), toxaphene, methyl parathion, ethyl p-nitrophenyl thionobenze-phosphonate (EPN), disulfoton, diesel fuel, and solvents. Sampling data gathered during the federal and state investigations confirmed the presence of all or most of the above substances in the soil and/or groundwater at the Fairfax Site.

15. At the Tampa Site, the following chemicals were formulated, used, and/or stored: toxaphene, parathion, methyl parathion, mevinphos, malathion, EPN, dimethoate, dioxathion, dimpylate, endrin, chlordane, insecticidal petroleum oil, herbicides, paraquat, xylene, zinc sulfate, ferrous sulfate, magnesium sulfate, manganese sulfate, sulfuric acid, phosphoric acid, sodium hydroxide, and nitric acid. Again, the sampling data gathered during the federal and state investigations confirmed the presence of all or most of the above substances in the soil and/or groundwater samples taken at the Tampa Site.

CERCLA STATUTORY SCHEME

16. Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

17. The President's authority under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has been lawfully delegated to the Regional Administrator of EPA Region 4.

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

(1) the owner and operator of a ... facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

... from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government. . .not inconsistent with the national contingency plan

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that "the amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D)."

20. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides that in actions for recovery of costs, "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

21. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines a "facility" as, "... any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located"

22. Section 101(29) of CERCLA, 42 U.S.C. § 9601(29) defines "disposal" in pertinent part as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any... hazardous waste into or on any land or water so that such... hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

23. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) defines a "release" in pertinent part as "any spilling, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

GENERAL ALLEGATIONS

24. The Fairfax and Tampa Sites is each a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. "Releases" of "hazardous substances" within the meaning of Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and 9601(22), occurred at the Fairfax Site and the Tampa Site during operation of each by Helena.

26. A "disposal" of hazardous substances within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), occurred during the time Defendant owned the Fairfax Site and the Tampa Site.

27 Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28 Defendant is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

29 In response to releases or threats of releases at the Site, EPA has conducted "response actions" at the Fairfax Site and the Tampa Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

30. The costs incurred by the United States as a result of the releases or threatened releases of hazardous substances at the Fairfax Site and the Tampa Site are "response" costs within the meaning of Sections 101(25) and 107(a) of CERCLA, 42

U.S.C. §§ 9601(25) and 9607(a).

31. The response costs incurred by the United States were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605.

32. As of October 28, 2000, the United States had incurred response costs of at least \$998,500.00, exclusive of interest, as a result of the releases or threatened releases of hazardous substances at or from the Sites.

33. The United States is continuing to incur further response costs, including costs of enforcement.

CLAIM FOR RELIEF

34. Paragraphs 1 through 33 are realleged and incorporated herein.

35. The United States has undertaken response actions at the Fairfax Site and the Tampa Site and has incurred response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in response to the release or threatened release of hazardous substances into the environment from each site, within the meaning of Section 101(14) and (22) of CERCLA, 42 U.S.C. § 9601(14) and (22).

36. Pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), the United States has incurred response costs at and in connection with the Fairfax Site and the Tampa Site not inconsistent with the national contingency plan.

37. Defendant is liable to Plaintiff pursuant to Section 107(a)(1), (2), and (3) of CERCLA, 42 U.S.C. § 9607(a)(1), (2), and (3), for all of Plaintiff's unreimbursed response costs incurred in connection with the Fairfax Site and the Tampa Site, and is

also liable pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for all of Plaintiff's future response costs, if any, incurred in connection with each site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States prays, that this Court:

1. Enter against Defendant, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaratory judgment on liability against Defendant Helena Chemical Company, a person or corporation doing business in the State of South Carolina and the State of Florida that will be binding on any subsequent action to recover further response costs incurred by the United States;
2. Require Defendant to reimburse the United States for all response costs incurred at the Site; and
3. Provide such other relief as the Court may deem just and appropriate.

Respectfully submitted,

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